

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

1 UNITED STATES OF AMERICA,)	3:12-cr-00015-HDM-WGC
)	
2 Plaintiff,)	
)	
3 vs.)	ORDER
)	
4 RANDY MACARIO ANCHETA,)	
)	
5 Defendant.)	
)	

6 Defendant filed a 28 U.S.C. § 2255 motion to vacate, set
7 aside, or correct his sentence contending that his sentence should
8 be vacated because the Hobbs Act robbery offense which served as a
9 predicate for his 18 U.S.C. § 924(c) conviction no longer qualifies
10 as a "crime of violence" in light of *Johnson v. United States*, 135
11 S.Ct. 2551 (2015) (ECF Nos. 123, 128). This court denied
12 defendant's motion on June 29, 2018 (ECF No. 142) based on the
13 Ninth Circuit Court of Appeals' decision in *United States v.*
14 *Howard*, 650 Fed.Appx. 466, 468 (9th Cir. 2016) wherein the court
15 held that Hobbs Act robbery qualifies as a crime of violence under
16 § 924(c). Defendant requests that this court issue a certificate
17 of appealability.

18 The standard for issuance of a certificate of appealability
19 calls for a "substantial showing of the denial of a constitutional
20 right." 28 U.S.C. § 2253(c). The Supreme Court has interpreted 28
21 U.S.C. § 2253(c) as follows: "Where a district court has rejected
22 the constitutional claims on the merits, the showing required to
23 satisfy § 2253(c) is straightforward: The petitioner must
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1 demonstrate that reasonable jurists would find the district court's
2 assessment of the constitutional claims debatable or wrong." *Slack*
3 *v. McDaniel*, 529 U.S. 473, 484 (2000); see also *James v. Giles*, 221
4 F.3d 1074, 1077-79 (9th Cir. 2000). The Supreme Court further
5 illuminated the standard for issuance of a certificate of
6 appealability in *Miller-El v. Cockrell*, 537 U.S. 322 (2003). The
7 Court stated in that case:

8 We do not require petitioner to prove, before the
9 issuance of a COA, that some jurists would grant the
10 petition for habeas corpus. Indeed, a claim can be
11 debatable even though every jurist of reason might
12 agree, after the COA has been granted and the case
13 has received full consideration, that petitioner
14 will not prevail. As we stated in *Slack*, "[w]here a
15 district court has rejected the constitutional
16 claims on the merits, the showing required to
17 satisfy § 2253(c) is straightforward: The petitioner
18 must demonstrate that reasonable jurists would find
19 the district court's assessment of the
20 constitutional claims debatable or wrong."

21 *Miller-El*, 123 S.Ct. at 1040 (quoting *Slack*, 529 U.S. at 484).

22 The court has considered the issues raised by defendant, with
23 respect to whether they satisfy the standard for issuance of a
24 certificate of appeal, and the court determines that none meet that
25 standard. The court therefore denies a certificate of
26 appealability in this case.

27 DATED: This 29th day of June, 2018.

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UNITED STATES DISTRICT JUDGE